

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE: RICHARD LEE ZIMMERMAN
DEBTOR/PLAINTIFF

CASE NO. 09-42327- RFN
CHAPTER 13

V.

**J.P. MORGAN CHASE BANK
FKA J.P. Morgan Chase Bank
CREDITOR./DEFENDANT**

www.ck12.org

**Complaint Seeking Declaratory Judgment
Pursuant to F.B.R.P. 7001(9)**

I. Preliminary Statement

1. This is a complaint challenging the validity and/or extent of the Defendant's and/of any assignees' or predecessors' Security Interest and Promissory Note on the basis of the Truth in Lending Act, 15 U.S.C. §§ 1601/-1666j and Regulation Z 12 C.F.R. §226. Debtor/Plaintiff seeks a determination that he has properly rescinded any security interest held on his property by Defendant and/or any assignees or predecessors of J.P. Morgan Chase & Co.. That there is no valid secured or unsecured claim by the Defendant, Defendant's assignees or Defendant's predecessors.

II. Jurisdiction

2. Jurisdiction of the Bankruptcy Court in this matter is provided by 28 U.S.C. §§ 1334 and 157, as amended, and the Order of Reference made by the district court for this district dated July 25, 1984.

3. This is a core proceeding.

III. Parties

4. Debtor/plaintiff, Richard Lee Zimmerman, is an adult individual residing at 4212 Calloway Drive, Mansfield, Texas, is a debtor in this Court, having filed a petition pursuant to chapter 13 of the Bankruptcy Code on April 22, 2009.

5. Defendant, J.P. Morgan Chase & Co., is a corporation whose principal place of business is at 2200 Ross Avenue, Dallas TX 75201.

IV. Factual Allegations

6. The Debtor/Plaintiff entered into a single loan transaction as defined by 12 C.F.R 226.17(d); a first mortgage with the First National Bank of Arizona ("FNBA") and a second mortgage with CIT Group/Consumer Finance Inc. ("CIT") on October 14, 2005 ("the loan transaction").

7. In connection with the transaction, prior to and on the date of the October 14, 2006 closing, First National Bank of Arizona and CIT Group/Consumer Finance, Inc. failed to **timely** deliver the Debtor/Plaintiff the material disclosures and the required 2 Notices of the Right to Cancel as required by TILA and Regulation Z.

8. On March 2, 2006 the Debtor received a Federal Express package from FNBA stated that they had failed to comply with the mandatory provisions of TILA. See Exhibit "A".

9. Included with the aforementioned package were two **defective** Notices of the Right to Cancel as both Notices failed to state the rescission expiration date required by 12 CFR §226.23(b)(1)(v) See Exhibit "B".

See Rodrigues v. U.S. Bank (In re Rodrigues), 278 B.R.683, 687 (Bankr. D.R.I. 2002) " The date of expiration of the right of rescission must be filled in."

10. On Saturday March 4, 2006, the Debtor/Plaintiff, executed his Right to Cancel Notice and sent this notice via Federal Express back to FNBA, notifying them that he was exercising his right to rescind the transaction pursuant to the Truth in Lending Act and Regulation Z. A true and correct copy of this rescission by which Debtor/Plaintiff exercised his rescission rights is attached. See Exhibit "C".

11. On Tuesday March 7, 2006 First National Bank of Arizona received and signed for the Debtor's/Plaintiff's executed Right to Cancel Notice. See Exhibit "D".

12. Sometime after March 8, 2006 Debtor/Plaintiff received yet another package from First National Bank of Arizona with 2 proper Notices of the Right to Cancel Notices stating that the rescission expiration date was March 13, 2006. See Exhibit "E".

13. Debtor/Plaintiff on his own accord had already rescinded the loan transaction back on March 4, 2006 nine days prior to First National Bank of Arizona's imposed expiration date.

14. First National Bank of Arizona and/or any assignees further failed to comply with the necessary step **within twenty days** as required by the Truth in Lending Act and Regulation Z to cause the public record to reflect that the lien had been released.

15. Unbeknownst to Debtor/Plaintiff, sometime after October 14, 2005 and before April 13, 2006 First National Bank of Arizona (FNBA) sold the promissory note and assigned the Deed of Trust to J.P. Morgan Chase Bank. See Exhibit "F".

16. On or about Friday April 14, 2006 J.P. Morgan Chase Bank through their counsel Castle Meinhold & Stawiarski LLC notified Debtor/Plaintiff by mail of their initiation of foreclosure proceedings.

17. On or about Friday April 14, 2006 Debtor/Plaintiff contacted Castle Meinhold & Stawiarski LLC, and notified them he had rescinded the loan transaction with First National Bank of Arizona in

March of 2006. Castle Meinhold & Stawiarski LLC requested that all of the pertinent documents be faxed to them immediately.

18. J.P. Morgan Chase Bank stopped the foreclosure action and withdrew their Notice of Election and Demand from the Public Trustee's office, partially complying with TILA and Regulation Z. See Exhibit "G".

19. J.P. Morgan Chase Bank now fully aware of the rescission of the transaction failed to implement the Debtor/Plaintiff's rescission of the transaction **within twenty days** as required by the Truth in Lending Act and Regulation Z.

20. On May 4, 2006 Debtor/Plaintiff offered to tender the property back to the creditors via U.S.P.S. Certified Mail pursuant to TILA §1635(b) and Regulation Z §226.23(d)(3). This was not required of the Debtor/Plaintiff until the creditors had fulfilled their statutory responsibility however, in a Gesture of Good Faith the Debtor/Plaintiff was trying to save himself and his family from additional financial harm. See Exhibit "H".

22. Neither FNBA nor JP Morgan Chase responded to the Debtor/Plaintiff's offer to tender **within the twenty days** required by TILA and Regulation Z.

V. Claims

23. The time relevant hereto Defendant J.P. Morgan Chase Bank was a creditor and as an assignee from First National Bank of Arizona within the meaning of the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601-/1666j and Regulation Z 12 C.F.R. §226.

24. The Debtor/Plaintiff's transaction with the Defendant J.P. Morgan Chase Bank was a consumer credit transaction within the meaning of TILA and Regulation Z.

25. By reason of Defendant as an assignee from First National Bank of Arizona, the Defendant is responsible for the failures to provide material disclosures and proper Notices of the Right to Cancel; as such, Debtor/Plaintiff has a right to rescind the transaction up to three years from the date of the transaction pursuant to TILA and Regulation Z.

26. Debtor/Plaintiff properly and timely exercised his right to rescind the transaction.

27. The Debtor/Plaintiff is entitled to a determination that any security interest held by Defendant and/or any assignee of the Defendant in his home is void pursuant to TILA and Regulation Z.

28. The Debtor/Plaintiff is entitled to a determination that Defendant and/or any assignee or predecessor holds no valid secured or unsecured claim pursuant to TILA 15 U.S.C. §1635(b) and Regulation Z 12 CFR 226.23(d)(3) and that any instrument purporting a lien thereof be ordered released. *Also See Sosa v. Fire 498 F.2d 114 (5th Cir.1974)*

VI. Request for Relief

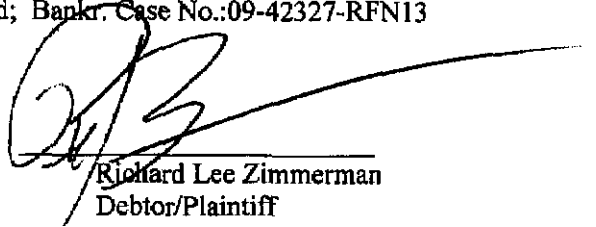
The Debtor/Plaintiff requests that this Court:

- a. Assume jurisdiction of this proceeding;

- b. Declare that the Debtor/Plaintiff validly rescinded the transaction;
- c. Declare that any liens purported by Defendant and/or any predecessors or assignees on the Debtor/Plaintiff's property are void and unenforceable;
- d. *Determine that Defendant or any possible assignees or predecessors have no allowed secured claim and no allowed unsecured claim in this bankruptcy case;*
- e. Award such other relief as the Court deems appropriate and just.

Respectfully Submitted; Bankr. Case No.:09-42327-RFN13

Date: July 1, 2009



Richard Lee Zimmerman
Debtor/Plaintiff

Respectfully submitted,

Bankr. Case No.:09-42327-RFN13

Richard Lee Zimmerman

Debtor

CERTIFICATE OF SERVICE.

I, the undersigned, hereby certify that a copy of the foregoing Complaint Seeking Declaratory Judgment Pursuant to F.B.R.P. 7001(9) was sent via U.S.P.S. Registered Certified Mail to:

TIM TRUMAN TRUSTEE
6851 NE LOOP 820 #300
NORTH RICHLAND HILLS TX 76180

US TRUSTEE
100 COMMERCE ST #97
DALLAS TX 75242

and upon the following parties of interest electronically by the Clerk or by or under the direction of the undersigned by United States First Class Mail, postage paid, on the date indicated below:

and an parties and creditors listed on the original mailing matrix and any amended mailing matrix.

Dated: July 1, 2009

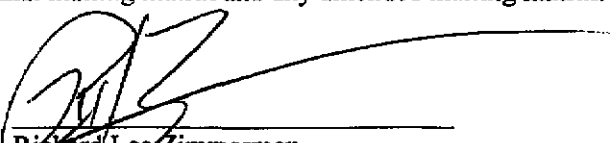

Richard Lee Zimmerman
Debtor/Plaintiff



EXHIBIT
A

February 25, 2006

Second Request

Rick L. Zimmerman
250 Starburst Circle
Castle Rock, CO 80104

Re: Loan Number 3339003089

Dear Mr. Zimmerman:

During a routine review of your funded mortgage loan, we discovered that you were not provided 2 copies of the "Notice of Right to Cancel" at the time you signed your closing loan documents. Due to this error Federal Law requires that you be given another full three days from the date you receive this package to reconsider your decision to accept the loan before the transaction is considered complete.

Because of this error we are enclosing with this letter two (2) new copies of the "Notice of Right to Cancel" for each borrower on your loan. You have three business days from the date on which you received this package to decide to cancel your loan if you so desire.

If you do not wish to cancel your loan, each borrower on the loan should simply sign the Notice where it indicates that your acknowledging receipt of the two copies of the Notice. For your convenience, we have marked the appropriate place for you to sign.

If, however, you would like to cancel your loan, you must then sign in the area that states "I Wish To Cancel" and return to First National Bank of Arizona in the addressed FedEx envelope within three days of your receipt of this package. As an alternative to returning the Notice, you may also provide a notice in writing to First National Bank of Arizona that you wish to rescind your loan. Once again this must be done within three days of your receipt of this package.

If you cancel your loan, First National Bank of Arizona will require the return of 100% of the original principal amount of your loan. Upon receipt of these funds, First National Bank of Arizona will return to you all of the interest, fees and charges as well as any funds paid to third-parties related to the closing of your loan. Immediately upon receipt of your notice that you wish to cancel, First National Bank of Arizona, in accordance with Federal Law, cause to be held in escrow your Promissory Note along with a Satisfactory of Mortgage or Reconveyance of Deed of Trust to be released to you upon First National Bank of Arizona's receipt from you of the principal amount of the loan.

We are grateful for the opportunity to have provided funding for your mortgage needs and sincerely hope you elect to continue in our relationship. Your prompt decision is appreciated.

If you have any questions please contact me toll free at 1-866-313-1211 ext. 8374 or 480-224-8372.

Sincerely,

Jewel Elsmere
Correction Specialist
First National Bank of Arizona

250 STARBURST CIRCLE
CASTLE ROCK, CO 80104

Document

Page 1 of 1

LOAN NO. 3339003089

(Identification of Transaction)

Your Right to Cancel

You are entering into a transaction that will result in a mortgage, lien or security interest on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is OCT 14 2005; or
 (2) the date you received your Truth in Lending disclosures; or
 (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

FIRST NATIONAL BANK OF ARIZONA
 3500 188TH STREET SW #102
 LYNNWOOD, WA 98037

NO EXPIRATION DATE

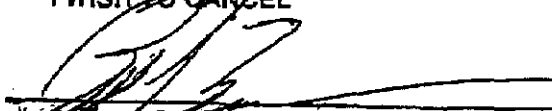
You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____

(date)

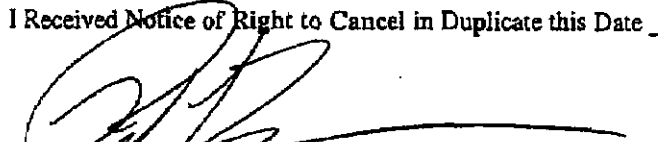
(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL


 Consumer's Signature

MARCH 4TH 2006
 Date

I Received Notice of Right to Cancel in Duplicate this Date MARCH 4TH 2006


 (Signature) RACK L ZIMMERMAN



2007087209 1 PG

ISC/CNRCGEN**/0483(12-81)-L

12/81

OFFICIAL RECORDS
 DOUGLAS COUNTY CO
 JACK ARROWSMITH
 CLERK & RECORDER
 RECORDING FEE:

\$6.00
 1 PG

250 STARBURST CIRCLE
CASTLE ROCK, CO 80104

LOAN NO. 3339003089

(Identification of Transaction)

Your Right to Cancel

You are entering into a transaction that will result in a mortgage, lien or security interest on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is OCT 14 2005; or
 (2) the date you received your Truth in Lending disclosures; or
 (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

FIRST NATIONAL BANK OF ARIZONA
 3500 188TH STREET SW #102
 LYNNWOOD, WA 98037

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature

Date

MARCH 4TH 2006

I Received Notice of Right to Cancel in Duplicate this Date

MARCH 4TH 2006

(Signature)

RACK L ZIMMERMAN



2007087209 1 PG

ISC/CNRCGEN**/0493(12-81)-L

12/81

OFFICIAL RECORDS
 DOUGLAS COUNTY CO
 JACK ARROWSMITH
 CLERK & RECORDER
 RECORDING FEE: \$8.00
 1 PG

Fed Services

FedEx Services | eCOSMOS | EDR Imaging | Data Viewer


EXHIBIT D

Searching database instance old0 for Airbill # 792027084010 with a ship date of 02/27/2006 and a range of +/- 15 days.

PACKAGE DETAILS:

Tracking No:	792027084010	Ship Date:	02/25/2006
Shipper Account No:	317752229		
Reference No (SRN):	0870		
Shipper:	JEWEL ELSMERE FIRST NATIONAL BANK 1665 W. ALAMEDA DR. TEMPE, AZ 85282 US	Recipient:	JEWEL ELSMERE 1665 W. ALAMEDA DR. TEMPE, AZ 85282 US

DELIVERY INFORMATION/SPOD Letter:

	C.EAST
Signed For By:	
	View Sigrec
Delivered to:	1665 W ALAMEDA
Delivery Date:	03/07/2006
Delivery Time:	09:22

1 airbill(s) matched your query.

WEB Development by Toby Smischny Feedback
Copyright, 2001. FedEx Services.
All rights reserved.

Page updated:03/18/2000 00:10:26

Access Count: 2929931

EXHIBIT E**Your Right to Cancel**

You are entering into a transaction that will result in a mortgage, lien or security interest on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

OCT 14 2005

- (1) the date of the transaction, which is _____; or
 (2) the date you received your Truth in Lending disclosures; or
 (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at
 FIRST NATIONAL BANK OF ARIZONA
 3500 188TH STREET SW #102
 LYNNWOOD, WA 98037

**IMPOSED
EXPIRATION
DATE**

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

MAR 13 2006

If you cancel by mail or telegram, you must send the notice no later than midnight of _____

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature _____

Date _____

MAR 9 2006

I Received Notice of Right to Cancel in Duplicate this Date _____, _____

(Signature) RICK L ZIMMERMAN

EXHIBIT F



1665 W. Alameda Drive
Tempe, AZ 85282
Office (480) 224-8321 Fax 480-224-8522

ALLONGE TO NOTE

LOAN NUMBER: 3339003089
BORROWER: ZIMMERMAN
IN THE AMOUNT OF: \$920,000.00

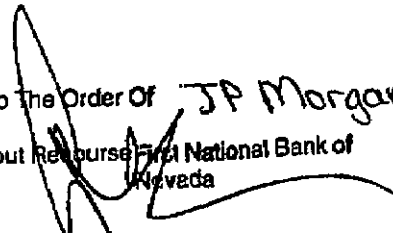
PAY TO THE ORDER OF:

First National Bank of
Nevada

WITHOUT RECOURSE BY:


AMY HAWKINS, ASSISTANT VICE PRESIDENT
FIRST NATIONAL BANK OF ARIZONA

Pay to The Order Of *JP Morgan Chase Bank, as Trustee*
Without Recourse *First National Bank of Nevada*

By: 
Deutsche Bank National Trust Company,
FKA Bankers Trust Company of California,
N.A. as Custodian as Attorney in Fact

Christopher Corcoran
Vice President

WITHDRAWAL OF NOTICE OF ELECTION AND DEMAND
FOR SALE BY PUBLIC TRUSTEE

SALE NUMBER 2006-0429

EXHIBIT
G

TO: THE PUBLIC TRUSTEE IN AND FOR THE COUNTY OF DOUGLAS
IN THE STATE OF COLORADO.

The undersigned hereby withdraws the Notice of Election and Demand for Sale by Public Trustee, dated the Nineteenth day of April, 2006, wherein a sale was demanded under that certain Deed of Trust executed by Rick L. Zimmerman to the Public Trustee in and for the County of Douglas, Colorado, which said Notice of Election and Demand for Sale was recorded on the Twenty-seventh day of April, 2006 in the office of the Clerk and Recorder of said County at Reception No. 2006034741 of the records of said office.

Dated October 18, 2006.

Castle Mainfield & Stawierski, LLC


By: 

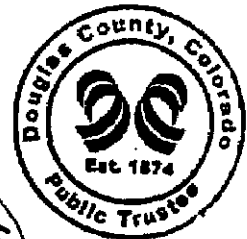
P.C. Wolf
#34797

Attorney for JP Morgan Chase Bank, as Trustee

The above-mentioned Notice of Election and Demand for Sale by Public Trustee has this day been withdrawn.

Dated this 14th day of November, 2006.


Public Trustee in and for the
County of Douglas, State of Colorado.



Zimmerman / 06-06010

OFFICIAL RECORDS
DOUGLAS COUNTY CO
CAROLE A. MURRAY
CLERK & RECORDER
RECORDING FEE: \$5.00
1 PG

2006097344
11/14/2006 08:27 AM



2006097344 1 PG

May 4th, 2006

EXHIBIT H

Rick L. Zimmerman
250 Starburst Circle
Castle Rock, CO 80104

Originator:
1st National Bank of Arizona
3500 188th St SW #102
Lynnwood, WA 98037
Loan Number 3339003089

Attorney:
Castle Meinhold & Stawiarski, LLC
999 19th St #2201
Denver, CO 80202

JP Morgan Chase Bank
Serviced by:
Homecomings Financial Network
Loan Number 440486710

To Whom It May Concern

I am not a lawyer and at this time I cannot afford one however, I am trying to prevent any financial harm to myself and my family. My loan documents are now being reviewed by The Comptroller of Currency Case # 625908.

This loan was rescinded on March 4th, 2006. I have not been contacted or received anything from 1st National Bank of Arizona except a threat from Judy Lowe that if I go ahead and rescind the loan that the bank would go ahead and start the foreclosure proceedings and I would lose the house and ruin my credit. I am disputing the validity of all debt since I exercised my right to rescind two months ago.

Pursuant to the Truth In Lending Act 226.15 paragraph (d)(2) Within 20 calendar days after receipt of notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

Pursuant to the Truth In Lending Act 226.15 paragraph (d)(3) If the creditor has delivered any money, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2).

I am offering the return of the property at the location of the property. Pursuant to the Truth In Lending Act 226.15 paragraph (d)(3) When the creditor has complied with 226.15 paragraph (d)(2) the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of the property may be made at the location of the property. If the creditor does not take possession within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.



Rick L Zimmerman